SUPREME COURT, U. S.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

## No. 1383

JACK L. ROACH,

*Petitioner,*

—v.—

STATE OF CONNECTICUT,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Connecticut entered in the above entitled case on February 28, 1969.

### Opinions Below

The order of the Chief Justice of the Supreme Court of Connecticut denying petitioner's application for an appeal is unreported and is printed in the Appendix, *infra*. There was no opinion of the Superior Court.

### Jurisdiction

The order of the Chief Judge of the Supreme Court of Connecticut denying petitioner's appeal was entered on February 28, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

## Question Presented

Whether a temporary injunction, issued after hearing, forbidding petitioner from "making public comments or stating opinions" which are "malicious or obscene" or from carrying signs on the premises of the University of Connecticut which carry statements or comments which are "untrue, malicious, or calculated to incite or encourage others to do or participate in unlawful acts," violates the First Amendment.

## Statement of the Case

On January 30, 1969, the State of Connecticut, by its Attorney General, initiated a civil proceeding against petitioner, a tenured associate professor of the University of Connecticut, which sought "A temporary and permanent injunction restraining Defendant from any act which might impair or prevent the accomplishment of any lawful activity, process or function of the University of Connecticut, including the disruption of placement interviews and unlawful entry into or upon buildings of the University of Connecticut" and "Such other relief as in law and equity may have pertained" (Complaint, p. 2).

The substance of the complaint was as follows (Complaint, pp. 2-3):

> "On October 30, 1968, November 26, 1968, January 15, 1969, and January 25, 1969, the defendant Roach did impair the lawful activities, processes and functions of the University of Connecticut in Mansfield, or did enter unlawfully into or upon buildings of the University for such purposes."

"The Defendant has repeatedly indicated his disregard for the lawful requirements of the General Statutes and of the University of Connecticut regarding conduct on the campus of said University, and has repeatedly disrupted lawful University activities."

"The Defendant's continued disruption of lawful University activities will greatly impede its functions and is otherwise illegal and contrary to the public policy of the State of Connecticut."

An Order to Show Cause was issued and a hearing on the application for a temporary injunction was held in the Superior Court, Tolland County, on February 4-5, 1969, at which petitioner appeared with counsel.

At the opening of the hearing, petitioner's counsel, on a motion to dismiss the temporary injunction, argued, among other grounds, that:

" . . . the relief which the plaintiff seeks clearly violates the constitutional rights of the defendant as contained in the First and Fourteenth Amendments. The relief is so broad it affects not only activity by speech, and pure speech, which is a prior restraint under Near and Minnesota. Second, it is so vague it does not adequately describe the prohibited act, and, third, it does not give the defendant an opportunity to protest or demonstrate which in a recent case in December 1968 by the Second Circuit of the Federal Court System said it is an absolute right of the defendant" (T. 4).[1]

The motion to dismiss was denied (T. 7).

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[1] The symbol "T" refers to the transcript of the hearing on the preliminary injunction which is part of the Record but separately paginated.

The events leading to the proceeding against petitioner grew out of four incidents on the campus of the University of Connecticut.

On October 30, 1968, placement interviews conducted by the Dow Chemical Company were interrupted and by "a large crowd" which gathered in the interview room making it impossible for the placement interviews to be conducted because of the noise being made (T. 14-15). Petitioner was among those in the room (T. 15) but he was not seen to be noisy (T. 38). He was standing in the room (T. 35) at the rear of the crowd (T. 49-50).

On November 26, 1968, placement interviews were held by the Olin Mathieson Company in a residence on campus (T. 15-16). A demonstration was held by 200-300 people (T. 47) outside the residence (T. 17-18). Petitioner was present (T. 18, 28). At one point he was seen attempting to mount the railing of the porch (T. 18). A state's witness said only that he saw petitioner at the top of the stairs leading up to the building's porch (T. 47). There was a brief disturbance at the top of the stairs when petitioner was either pushed or slipped (T. 47, 79). The crowd became excited but petitioner turned and said, "No. I slipped. I wasn't pushed. I slipped. It's Okay" (T. 47, 79). His explanation quieted the crowd (T. 79).

The activities did not interfere with the interviews being held inside the residence (T. 40) and all the scheduled interviews were completed (T. 39). Though rocks and bricks were thrown at the building (T. 39), there was no claim that petitioner had thrown any (T. 39-40).

The third event took place on January 15, 1969 in and around Gulley Hall during the course of a meeting of the

University's Board of Trustees (T. 33-34). The demonstration consisted of a march with picket signs around the Hall (T. 86-88).

Four or five people (T. 34) climbed a fire escape outside the room where the Board was meeting and shouted and pounded on a door leading into the room where the meeting was being held (T. 34). The people were on the fire escape less than five minutes (T. 56) and their activity resulted only in "a pause" in the meeting (T. 41), not its adjournment (*ibid.*).

Petitioner was one of those on the fire escape (T. 53). He was seen to stamp his feet on the fire escape but wasn't seen to shout (*ibid.*). He was on the fire escape "half a minute, probably less than that" (T. 92). He went up the fire escape to tell the students there to come down (T. 85, 91).

Petitioner testified that he had "assembled with a group of around twenty students and faculty for the purpose of a non-obstructive demonstration outside of Gulley Hall" (T. 84). The purpose of the demonstration was "to protest the fact that we [a number of faculty members] would not be given the opportunity of an open hearing on our cases [concerning disciplinary action]" (*ibid.*). The demonstrators found that they were not to be permitted to attend the meeting though it was "a regular meeting of the Board of Trustees, and by their regulations these are open meetings" (T. 84-85). They were kept out by the police (*ibid.*) until it was learned by one of the administrators that the doors to the meeting room had been locked (T. 77).

The last relevant event took place on January 25, 1969 during a special meeting of the Board of Trustees "called

for the purpose of a hearing for four staff members" (T. 34). It too was held at Gulley Hall (*ibid.*). On that occasion the disturbance consisted of mud balls thrown at the windows of the Hall and noise on the fire escape (T. 34-35).

Petitioner was present at this demonstration. He was, according to a state's witness, only "carrying signs, standing around and talking . . ." (T. 63-64). He was not on the fire escape (T. 40-41). He had been told not to go onto the fire escape and "to pass the word" (T. 94). That others were not to go onto the fire escape either.

When invited into the Board meeting, petitioner said "Tell the Board to go fuck themselves" (T. 95).[2]

On the basis of this evidence, a temporary injunction, in the following words, was issued upon the close of the hearing (T. 101-102):

> "These are, therefore, by authority of the State of Connecticut, to command and enjoin you and each of you, under penalty of fine of $1,000.00 from any act which might impair or prevent the accomplishment of any lawful activity, process, or function of the University of Connecticut, including the disruption of placement interviews and unlawful entry into or upon the buildings of the University of Connecticut.
>
> More particularly, the following acts are enjoined: Obstructing the entry of any building or approach

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[2] A film taken by a television station on January 25th was viewed by the court (T. 68) over objection (T. 67). The film (Plaintiff's Exhibit C) depicted only a dispute between petitioner and a television news reporter (T. 67). It had no bearing on the day's events.

thereto on the University premises; entering any building on the University premises where entry is unauthorized or has been prohibited to him by those in authority; impeding the ingress or egress of authorized persons to any building on the University premises; any violence or threat of violence to anyone on the University premises; wilfully making any unnecessary noise or commotion calculated to disrupt, impede, or impair lawful activities on University premises; and inciting or encouraging others to do any of the aforesaid acts.

The following acts are not prohibited: Making public comments or stating opinions, if done in an orderly manner, free from threats and violence, and such are not malicious or obscene; and carrying signs on University premises stating certain facts or opinions, if done in an orderly manner, free from threats and violence and obstruction to buildings, their entrances, exits, and approaches; and such statements or comments are not untrue, malicious, or calculated to incite or encourage others to do or participate in unlawful acts."

Petitioner's motion at the close of the hearing to make the injunction permanent was denied (T. 103).

On February 19, 1968, petitioner made application for an appeal to the Supreme Court of Connecticut under Conn. Gen. Stat. Sec. 52-265(a). The appeal asserted that the temporary injunction violated the First Amendment on the ground that it was "ambiguous," and a "prior restraint" (Appeal of Defendant, p. 3). The appeal was denied on February 28, 1969.

**Reasons for Granting the Writ**

Certiorari should be granted in this case because the terms of the injunction under which petitioner must labor, unarguably violate the First Amendment. By its terms, petitioner, among other things, is forbidden from:

a) "making public comments or stating opinions" which are "malicious or obscene"; and

b) carrying signs on University premises which carry statements or comments which are "untrue, malicious, or calculated to incite or encourage others to do or participate in unlawful acts."

To forbid one from speaking untruths, making "malicious" statements, or utilizing "obscenity" in speech, not only forbids conduct in terms which are too vague or overbroad. In addition, it is a prior restraint on pure speech itself, a burden which is forbidden by the First Amendment. *Near* v. *Minnesota,* 283 U.S. 697 (1931); *Burstyn* v. *Wilson,* 343 U.S. 495, 504 (1952); *Bantam Books* v. *Sullivan,* 372 U.S. 58 (1963).

The injunction's language is of course also void for vagueness for it restricts petitioner's speech "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application . . . " *Connally* v. *General Const. Co.,* 269 U.S. 385 (1926). Likewise, the injunction is overbroad, for "it is plainly susceptible of sweeping and improper application." *Keyishian* v. *Board of Regents,* 385 U.S. 589, 599 (1967). See also *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965); *United States* v. *Robel,* 389 U.S. 258 (1967).

One would not have thought that a court through the injunctive power, any more than a legislature through the legislative power, could validly make departure from the "truth" in political affairs a criminal offense.[3] Of course, one can be held liable civilly for making libelous statements with malice against public officials,[4] and for making libelous statements against private persons as provided by state law. But the injunction here does not prohibit petitioner from making untruthfully or maliciously about individual persons. Rather, it forbids his making any such statements relating to University affairs[5] including, presumably, statements concerning the University of Connecticut as an institution and its administration, the structure of the Connecticut and federal governments, the nature of economic relations, directions to reach Gulley Hall, or the time of day.[6]

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[3] Excepting, of course, statements made under oath.

[4] *New York Times* v. *Sullivan*, 376 U.S. 254 (1964).

[5] Read literally, the last paragraph of the injunction is not confined to University affairs. However, it was probably not the intention of the court to prohibit petitioner from speaking untruthfully, maliciously, or obscenely on any subject anywhere in the world.

[6] The terms "untrue" and "malicious" are related disjunctively in the injunction. We have related them conjunctively here only to show that even then they prohibit speech which is constitutionally protected. Of course, in the disjunctive, the terms constitutionally have no arguable validity whatever. Furthermore, it is questionable whether the word "maliciously" is even used in the artful constitutional sense.

It is also doubtful that the injunction intended the use of the word "obscenity" in its constitutional sense, as "material which deals with sex in a manner appealing to prurient interest." *Roth* v. *United States*, 354 U.S. 476, 487 (1957). Surely petitioner's reply to the invitation extended him to attend the meeting of the Board of Trustees could by no stretch of the imagination be said to appeal to anyone's "prurient" interest. Of course pruriency in the *Roth* sense is never involved in political speech.

As written, the injunction bears a remarkable relationship to the statute *De Scandalis Magnatum* issued in 1275 in the reign of Edward I:

> "That from henceforth none be so hardy to cite or publish any false news or tales whereby discord or occasion of discord or slander may grow between the King and his people or the great men of the realm; and he that doth so shall be taken and kept in prison until he hath brought him into the court which was the first author of the tale." [7]

The consequences of the injunction are manifest. Petitioner is incapacitated from speaking out on a wide variety of subjects of public interest because of the breadth of the injunction. No matter how judiciously he may choose his words, the court below may find them untrue, if not malicious or obscene. Petitioner would then be put to the pains of a contempt prosecution with only an arguable right to challenge the underlying validity of the injunction. See *Walker* v. *Birmingham,* 388 U.S. 307 (1968). The more prudent course, therefore, is for petitioner to say nothing rather than risk one or more prosecutions for contempt. Could the chilling effect of the injunction be any plainer?

Mr. Justice Black anticipated the case at bar when he said in *Garrison* v. *Louisiana,* 378 U.S. 64, 79 (1964) (concurring):

> "I believe that the First Amendment, made applicable to the States by the Fourteenth, protects every person from having a State or the Federal government fine, imprison, or assess damages against him when he has

[7] Brant, The Bill of Rights (1965) 91.

> been guilty of no conduct . . . other than expressing an opinion, even though others may believe that his views are unwholesome, unpatriotic, stupid or dangerous."

The use of the injunction to regulate campus demonstrations is increasingly being utilized by university administrators. In earlier days injunctions have been used to cripple trade unions (see Frankfurter and Green, The Labor Injunction, *passim*; Chafee, Free Speech in the United States (1946) 326-342); and to hobble the civil rights movements in the South (see, e.g., *Congress of Racial Equality* v. *Douglas*, 318 F.2d 95 (5th Cir. 1963), *cert. denied sub nom. Congress of Racial Equality* v. *Burt*, 375 U.S. 829 (1963)). It has also been utilized to interfere with the First Amendment rights of those opposed to racial equality. See *Fields* v. *Fairfield*, 375 U.S. 248 (1963); *Carroll* v. *President and Commissioners*, 37 L.W. 4041 (November 19, 1968).

The injunction is a powerful weapon which has historically been the object of judicial abuse. If not closely supervised by this Court to assure compliance with constitutional requirements, the abuses are bound to multiply. They are also bound to encroach upon First Amendment rights unless the lower courts are forcefully reminded, whenever the occasion demands, that:

> "An order issued in the area of the First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order." *Carroll* v. *President and Commissioners*, 37 L.W. at 4043.

## CONCLUSION

**For the reasons stated above, certiorari should be granted.**

Respectfully submitted,

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May 12, 1969